

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ARMANDO RODRIGUEZ,

Petitioner,

v.

JUDY SMITH, Warden
Oshkosh Correctional Institution,

Respondent.

ORDER

10-cv-355-bbc

In response to this court's order entered October 26, 2010, petitioner Armando Rodriguez has submitted a second motion for a certificate of appealability along with a certified copy of his trust fund account statement so that a determination may be made whether he is indigent for the purpose of proceeding on appeal in forma pauperis.

A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000); see also 28 U.S.C. § 2253(c)(2). Because nothing in petitioner's second motion convinces me that I erred in denying his request for a certificate of appealability, the motion will be denied. Under Fed. R. App. 22(b), petitioner may request a circuit judge to issue the certificate.

From petitioner's trust fund account statement, I conclude that he qualifies for indigent status on appeal. Further, I assess petitioner an initial partial payment of the \$455 fee for filing his appeal in the amount of \$0.84.

ORDER

IT IS ORDERED that

1. Petitioner Armando Rodriguez's second request for a certificate of appealability, dkt. #19, is DENIED.

2. Petitioner's request for leave to proceed in forma pauperis on appeal is GRANTED. Petitioner may have until December 15, 2010, in which to submit a check or money order made payable to the clerk of court in the amount of \$0.84. If, by December 15, 2010, petitioner fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal. The clerk of court is requested to insure that the court's financial records reflect petitioner's obligation to pay the

\$0.84 initial partial payment and the remainder of the \$455 fee in monthly installments.

Entered this 24th day of November, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge